



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 25, 2003

Ms. Lisa M. Salinas
Custodian of Records
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2003-2021

Dear Ms. Salinas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180775.

The City of Baytown Police Department (the "Department") received a request for specific information in the Department's possession regarding a fatal motor vehicle accident. You claim that some of the requested information is excepted from disclosure under section 552.108 and section 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you claim that certain information contained in your investigative files is protected under the motor vehicle records exception of section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency *of this state*; [or]
- (2) a motor vehicle title or registration issued by an agency *of this state*[.] (emphasis added)

Section 552.130 excepts only that information *issued by this state*. Some of the information you claim is exempted under section 552.130 is issued by states other than Texas. Therefore, under section 552.130 you can only withhold the Texas driver's license numbers. All other pink highlighted information must be released.

We now turn our attention to the materials you claim are excepted under section 552.108. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 shoulders the burden of reasonable explanation, as to how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have met this burden. You state that the investigation file relates to a pending criminal investigation. Based upon this representation, we therefore conclude that the release of these related investigation materials would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the Department may withhold the orange highlighted information under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

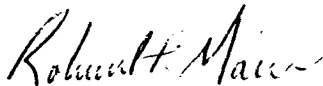
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Robert F. Maier
Assistant Attorney General
Open Records Division

RFM/seg

Ref: ID# 180775

Enc. Submitted documents

c: Mr. Bruce Harrison
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(w/o enclosures)